

FACTUAL ALLEGATIONS

10. At all times herein, Defendants, were attempting to collect, from Plaintiff, a debt as defined by §1692a (5) of the FDCPA and a consumer debt as defined by § 1788.2(f) of the Rosenthal Act.

11. On January 8, 2008, Erin Capital filed suit against Plaintiff in the Superior Court of California, San Diego County in the cause captioned as Erin Capital Management LLC v. Heather St. Clair; Case No.: 37-2008-00075465-CL-CL-CTL, (hereinafter "State Case").

12. On January 15, 2009, at Erin Capital's request, a default judgment was entered in the State Action against Plaintiff.

13. Plaintiff hired attorney William R. Rose (hereinafter "Mr. Rose") to set aside the default judgment in the State Action and negotiate a complete settlement of the Debt.

14. Mr. Rose contacted Eltman, thereby also communicating to both Eltman and Erin Capital, that he was representing Plaintiff.

15. From January 18, 2010 through February 3, 2010, Mr. Rose and a managing attorney at Eltman, Michel Ross, exchanged emails regarding negotiating a settlement of the State Case. The emails from Mr. Rose clearly showed in their signature block that they were from The Law Offices of William Rose in Santa Monica, California, an attorney. The emails from Michael Ross clearly showed in their signature block that they were from Eltman, Eltman & Cooper a law firm in New York NY. This was additional confirmation to Erin Capital and Eltman that Plaintiff was represented by counsel, specifically Mr. Rose. A true and accurate copy of the emails containing the settlement terms are attached hereto and fully incorporated by reference as Plaintiff's Exhibit "A"

16. Further emails concluding in February 12, 2010 between the attorneys representing the parties in the State Action finalized the terms of the settlement. A true and accurate copy of the emails is attached hereto and fully incorporated by reference as Plaintiff's Exhibit "B". This was further confirmation to Erin Capital and Eltman that Plaintiff was represented by counsel.

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1 17. As the emails from Michael Ross to Mr. Rose indicated, the settlement was
2 accepted and that upon receipt of the settlement funds and clearing the bank, the Debt would be
3 paid in full and the Action dismissed.

4 18. Plaintiff paid the full settlement amount, as agreed.

5 19. Following receipt of the settlement amount, Erin Capital filed pleadings in the
6 State Action to set aside the default judgment and on April 23, 2010, the State Action was
7 dismissed with prejudice.

8 20. On August 2, 2010 and August 12, 2010, Eltman sent Plaintiff notices, attempting
9 to collect the paid debt. These were communications within the meaning of §1692a(2) of the
10 FDCPA.

11 21. The notices stated, among other things, "Negotiate with us before we proceed to
12 garnishment." The notice confirmed the name of Plaintiff's present employer and that her wages
13 would be garnished if Plaintiff did not call them and asked to speak with "Shaun, Helena, or Sam
14 as soon as possible." The notices also stated that: "To avoid having legal documents served to
15 your employer and involuntary paycheck deductions...call ...as soon as possible." The notice
16 further stated: "Judgment Amount with Interest: \$6,459.76." A true and accurate copy of the
17 notices are attached hereto and fully incorporated by reference as Plaintiff's Exhibit "C".

18 22. Defendants knew that Plaintiff was represented by counsel when they sent the
19 collection notices in Exhibit C to Plaintiff.

20 23. Defendants misrepresented, in the notices in Exhibit C to Plaintiff, the amount of
21 the Debt owed as \$6,459.76, when in fact the amount owed was zero.

22 24. Defendants misrepresented, in the notices in Exhibit C to Plaintiff, the legal status
23 of the Debt as owed when in fact the debt had been paid.

24 25. Promptly upon receipt of the notice from Eltman, Plaintiff called Eltman and
25 spoke with a collection agent, who said her name was "Helena."

26 26. Helena advised Plaintiff that this call is to collect a debt and asked Plaintiff where
27 Plaintiff worked and the last four digits of Plaintiff's Social Security Number.

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1 27. Plaintiff informed Helena that Plaintiff had a lawyer and everything had already
2 been settled by payment of the debt and dismissal of the State Action.

3 28. Helena represented that Plaintiff was still being sued for the debt and it wasn't
4 paid and the case wasn't settled. She further implied that the lawyer hadn't done anything for
5 Plaintiff other than take her money.

6 29. This upset Plaintiff as she did not know at this point whether in fact she had been
7 defrauded by her attorney, if she would have to pay a second time, if her wages would be
8 garnished making it difficult for her to survive financially and jeopardizing her employment
9 because Eltman would contact her employer and tell them about the debt.

10 30. During the phone conversation with Helena, Plaintiff cried. Helena said that
11 Plaintiff should calm down and suggested throwing cold water on Plaintiff's face to stop crying.

12 31. Subsequent to this phone call, Plaintiff, an ordinarily self-sufficient independent
13 single woman, contacted her father to ask for a loan in necessary to pay this debt a second time.
14 She had never had to ask her father for assistance before. This embarrassed and humiliated her
15 further.

16 32. On August 26, 2010 at 8:03 AM, Plaintiff received the following phone message:

17 This phone call is for Heather St. Clair if you are not Heather St. Clair, hang up or
18 disconnect. There will be a three second delay in this message. By continuing to
19 listen to this message, you are acknowledging to be Heather. Heather you should
20 not be listening to this message where people can hear as it contains personal and
 private information. Three second delay to listen in private. This message is from
 Sam Rams of Eltman, Eltman and Cooper and is an attempt to collect a debt.
 Heather please call me to discuss an important business matter

21 33. These were a communications within the meaning of §1692a(2) of the FDCPA.

22 34. Defendants knew that Plaintiff was represented by counsel when they telephoned
23 her on August 26, 2011.

24 35. Since the dismissal of the Action in April, 2010, the defendants had never
25 communicated with Mr. Rose about the Debt or the State Action.

26 36. At no time had the defendants received permission from Mr. Rose to contact
27 Plaintiff. Defendant knew or could readily ascertain Plaintiff's attorney's name and address.

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(4) making false representations or implication that nonpayment of the debt will result in the seizure, garnishment, attachment, or sale of any property or wages, when such action would not be lawful, by means of the above mentioned notices and/or phone calls, in violation of §§ 1692e(4) of the FDCPA;

(5) threatening to take legal action that cannot legally be taken by garnishment of wages for a debt that was not owed, by means of the above mentioned notices and/or phone calls, in violation of §§ 1692e(5) of the FDCPA;

(6) attempting to collect an amount which was not expressly authorized by agreement or permitted by law, by means of the above mentioned notices, in violation of §§ 1692f(1) of the FDCPA.

43. As a result of the Defendant's actions, Plaintiff is entitled to actual damages, statutory damages, attorney's fees and costs of this action.

SECOND CLAIM FOR RELIEF

(Claim for violations of the Rosenthal Act)

Against Erin Capital

44. Plaintiff repeats, re-alleges, and incorporates by reference all the allegations contained in the paragraphs above.

45. Defendant's acts and omissions violated the Rosenthal Act including, but not limited to §1788.17. Defendant's violations of § 1788.17 of the Rosenthal Act (which incorporates several of the provisions of the FDCPA) include, but are not limited to those enumerated in ¶ 42 above.

46. Defendant's acts and omissions violated § 1788.10(e) the Rosenthal Act by making threats that nonpayment of the debt will result in the garnishment or attachment of the debtor's wages, when such action would not be permitted by law or was not in fact contemplated by the debt collector.

47. Defendant's violations of the Rosenthal Act were willful and knowing, thereby entitling Plaintiff to statutory damages pursuant to § 1788.30(b) of the Rosenthal Act.

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CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

HEATHER ST. CLAIR

(b) County of Residence of First Listed Plaintiff San Diego

(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Patric A. Lester, 5694 Mission Center Road, #358, San Diego, CA
92108, Phone: (619) 665-3888**DEFENDANTS**ERIN CAPITAL MANAGEMENT, LLC., and ELTMAN, +

County of Residence of First Listed Defendant

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE
LAND INVOLVED.

Attorneys (If Known)

'11CV1795JM BLM**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|--|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated <i>or</i> Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated <i>and</i> Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input checked="" type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS	LABOR	IMMIGRATION
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	

V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from another district (specify)
- ☐ 6 Multidistrict Litigation
- ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTIONCite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
15 U.S.C. § 1692, et seqBrief description of cause:
Fair Debt Collection Practices Act**VII. REQUESTED IN COMPLAINT:**☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

75,000.00

CHECK YES only if demanded in complaint:

JURY DEMAND:

☒ Yes ☐ No**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

08/11/2011

s/Patric A. Lester

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____